IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1787 OF 2007

Shri Gopala Shankar Khalkar .....Petitioner.

V/s

Shri Vinod Vasant Khalkar
& Ors. .....Respondents.

Mr. Hardas i/b P.N. Joshi for the Petitioner.

Mr. R.D. Suryavanshi i/b S.M. Sabrad for Respondent Nos. 1 to 5.

CORAM: V.M. KANADE, J.
DATE : 11th July, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of Respondent Nos. 1 to 5.

2. Petitioner takes exception to the order passed by the Trial Court whereby his application for temporary injunction was rejected and which order was confirmed by the Lower Appellate Court. Petitioner had filed a suit for declaration that he had one & half share in the well constructed in Gat No.877. He also prayed for consequential decree and injunction restraining the Respondents from interfering with his right to have access and use the well as per his share.

3. The learned Counsel appearing on behalf of the Petitioner submitted that both the Lower Courts erred in not taking into consideration the fact that the Petitioner had established his legal right which was not challenged and, as such, order of injunction ought to have been granted. He submitted that various documents clearly establish that the Petitioner had a right to use the disputed well.

3. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the Petitioner. Both the Lower Courts have arrived at a conclusion that prima facie case was not made out and, therefore, rejected the application filed by the Plaintiff. In my view, at this stage, no case is made out for interfering with the impugned order passed by the Trial Court and confirmed by the Lower Appellate Court. It would be appropriate if the Trial Court is directed to decide the suit as expeditiously as possible and, in any case, within a period of one year from today.

4. Accordingly, Trial Court is directed to decide the suit as expeditiously as possible and, in any case, within a period of one year from today. It is clarified that the Trial Court, while deciding the case, shall not be influenced by the order passed by the Lower Appellate Court while disposing of the said application which was filed by the Petitioner.

5. With the above directions, Petition is dismissed.

(V. M. KANADE, J.)